

ASSEMBLY BILL

No. 1125

Introduced by Assembly Member Wagner

February 22, 2013

An act to add Section 1032.5 to the Code of Civil Procedure, relating to attorney's fees.

LEGISLATIVE COUNSEL'S DIGEST

AB 1125, as introduced, Wagner. Attorney's fees.

Under existing law, parties to actions or proceedings are entitled to their costs, as specified. Except to the extent attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties. Existing law provides that a prevailing party is entitled, as a matter of right, to recover costs in any action or proceeding, including attorney's fees, except as otherwise expressly provided by statute.

This bill would require the court, in setting the amount of an award of attorney's fees to a prevailing party, to determine a lodestar, as defined, and an adjustment pursuant to specified procedures.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1032.5 is added to the Code of Civil
- 2 Procedure, to read:
- 3 1032.5. (a) It is the intent of the Legislature to provide a
- 4 uniform process and market-based standards for court awards of

1 attorney's fees when a party has a legal right as a prevailing party
2 to recover attorney's fees from an opposing party. To the extent
3 this section is inconsistent with any other law or case law precedent
4 that applies to awards of attorney's fees to a prevailing party, the
5 process and standards for both trial and appellate courts set forth
6 in this section shall control. It is also the intent of the Legislature
7 that this section shall not apply if the basis for an award of
8 attorney's fees is any ground other than entitlement as a prevailing
9 party to recover attorney's fees from an opposing party. The
10 grounds for court awards of attorney's fees on grounds other than
11 entitlement as a prevailing party include, but are not limited to,
12 Section 1021.5 of this code and Sections 274, 916, 1101, 2030,
13 2031, 2107, 2255, 3557, 3652, 4002, 4063, 4303, 4403, 4919,
14 4927, 17512, and 17803 of the Family Code.

15 (b) (1) This section applies to the award of attorney's fees by
16 a court under the following circumstances:

17 (A) If the prevailing party is entitled to attorney's fees as a
18 matter of contract.

19 (B) If the prevailing party is entitled to attorney's fees pursuant
20 to statute.

21 (C) If the court, pursuant to statute, has discretion to award
22 attorney's fees to the prevailing party.

23 (2) This section does not apply:

24 (A) To sanctions or penalties that may be measured in whole
25 or in part by attorney's fees.

26 (B) If the ground for an award of attorney's fees is different
27 from, or in addition to, prevailing party status.

28 (C) To attorney's fees awarded as damages.

29 (c) The following definitions shall apply for purposes of this
30 section:

31 (1) "Adjustment" means an amount determined by the court by
32 which the lodestar is increased or reduced.

33 (2) "Appropriate market" means the competitive legal services
34 market in which reasonable clients with comparable legal services
35 needs would seek counsel for matters similar to the matter before
36 the court. If a reasonable client would engage more than one
37 attorney, there may be more than one appropriate market. A market
38 may be, but is not necessarily, defined by geography.

1 (3) “Legal services” includes services of paralegals and other
2 support personnel to the extent a reasonable client would pay for
3 those services in the appropriate market.

4 (4) “Lodestar” is an amount determined by the court, as provided
5 in this section, to be within the range of fees that a reasonable
6 client would pay for the legal services in the appropriate market.
7 There is a rebuttable presumption going to the burden of proof that
8 the appropriate market is the county in which the court is situated.

9 (5) “Timekeeper” includes any attorney or support personnel
10 whose services are billed at an hourly rate.

11 (d) To set the amount of an award of attorney’s fees, the court
12 shall determine a lodestar and an adjustment. An adjustment may
13 be zero, and there is a rebuttable presumption going to the burden
14 of proof that the adjustment should be zero. If no party requests
15 an adjustment, the adjustment shall be zero. If the adjustment is
16 zero, the award shall be the lodestar.

17 (e) (1) The court shall determine the lodestar by finding all of
18 the following:

19 (A) The actual hourly rate charged or otherwise recorded at the
20 time the services were performed by each timekeeper who
21 performed legal services for which the award is requested.

22 (B) Whether the actual hourly rate for each timekeeper is within
23 the range of rates reasonably charged at the time the services were
24 performed for comparable work by timekeepers in the appropriate
25 market.

26 (C) The actual amount of time correctly recorded by each
27 timekeeper for the legal services for which the award is requested.

28 (D) Whether the actual amount of time is reasonable for the
29 legal services performed.

30 (E) The amount, if any, the prevailing party has agreed in writing
31 to pay for the legal services. If that agreed amount is equal to, or
32 less than, the amount the court determines to be reasonable under
33 this subdivision, the court shall determine that the agreed amount
34 is the lodestar.

35 (2) In its discretion in the particular case, the court may appoint
36 a referee pursuant to subdivision (a) of Section 639 for
37 determination of the lodestar. On the timely request of any party
38 after that appointment, the court shall make all findings de novo.

39 (3) The amount of the lodestar is a factual finding. If the lodestar
40 is reviewed on appeal, review shall be under the substantial

1 evidence standard. There is no presumption that a judge of the
2 superior court has any inherent or personal knowledge of the
3 reasonableness of the lodestar or its elements.

4 (f) (1) If any party requests an adjustment to the lodestar, the
5 court may adjust the lodestar upward or downward.

6 (2) To determine an adjustment, if any, the court shall consider
7 all of the following:

8 (A) The contingent risk, if any, of not recovering a fee incurred
9 by any of the prevailing party's attorneys.

10 (B) Any agreed or inherent delay in recovering a fee incurred
11 by any of the prevailing party's attorneys.

12 (C) Any other circumstances that make it just and reasonable
13 to increase or reduce the lodestar.

14 (3) An adjustment is a matter of the superior court's discretion
15 and, if reviewed on appeal, shall be subject to an abuse of discretion
16 standard. The Court of Appeal shall base its review on the record
17 and the superior court's memorandum decision, if one is requested
18 under subdivision (i), and shall not presume that a judge of the
19 superior court has any inherent or personal knowledge of the
20 reasonableness of attorney's fees in the appropriate market.

21 (g) If requested, the court shall award interest at the prejudgment
22 rate on that portion of the lodestar actually paid by the prevailing
23 party, from the date of each payment until the date of entry of the
24 award. If awarded under this subdivision, interest shall be included
25 in the lodestar for all further purposes under this section. Interest
26 shall not be awarded on the difference between the lodestar and
27 an upwardly adjusted award, but the court may consider the time
28 value of money in setting the adjustment.

29 (h) The applicant shall present admissible evidence sufficient
30 for the court to make the findings required by subdivision (e) and
31 to support any requested upward adjustment. A party opposing an
32 award of attorney's fees, other than as a matter of law, shall include
33 admissible evidence to support each ground of opposition. Any
34 direct or indirect interest of an attorney in a fee award shall not be
35 a ground for excluding that attorney's opinion evidence, if the
36 evidence would otherwise be admissible, but may be taken into
37 account in the weight given to that evidence.

38 (i) (1) If the prevailing party requests a total award exceeding
39 twenty-five thousand dollars (\$25,000), any party may request a
40 memorandum decision at any time before the court declares the

1 attorney's fee matter submitted. If a party requests a memorandum
2 decision, the court shall provide a statement sufficient for an
3 appellate court to understand all of the following:

4 (A) The basis for the court's findings under subdivision (e).

5 (B) The factors the court considered in making any decision
6 concerning an adjustment.

7 (C) How the court applied the factors it considered in making
8 its decision concerning an adjustment.

9 (2) If a party requests a memorandum decision, the court also
10 shall make findings either on the record or in the decision on each
11 evidentiary objection made by each party. Failure to decide an
12 evidentiary objection shall not be a ground to reverse or remand
13 the award, but an appellate court shall consider each unresolved
14 objection to be resolved as follows:

15 (A) In favor of receiving evidence that supports any finding.

16 (B) To exclude evidence on a point as to which the court made
17 no finding.

18 (C) To exclude evidence contrary to any finding.